

**Joint Legislative Audit and Review Commission
of the Virginia General Assembly**



**Review of Virginia's System
of Capital Punishment**

**Staff Briefing
December 10, 2001**

Introduction

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Presentation Outline

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- ☒ **Study Overview and Summary of Findings**
- ☐ **Background on Capital Punishment**
- ☐ **Prosecution of Capital-Eligible Cases**
- ☐ **Judicial Review of Capital Cases**
- ☐ **Executive Clemency**
- ☐ **Conclusion**

Study Mandate

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- Based on the authority provided through Sections 30.56 to 30.63 of the *Code of Virginia*, the Commission directed JLARC staff to conduct a review of Virginia's system of capital punishment.
- The Commission requested that this review focus on two major issues:
 - the use of prosecutorial discretion in the application of the death penalty, and
 - the fairness of Virginia's judicial review process

Research Activities to Evaluate the Use of Prosecutorial Discretion

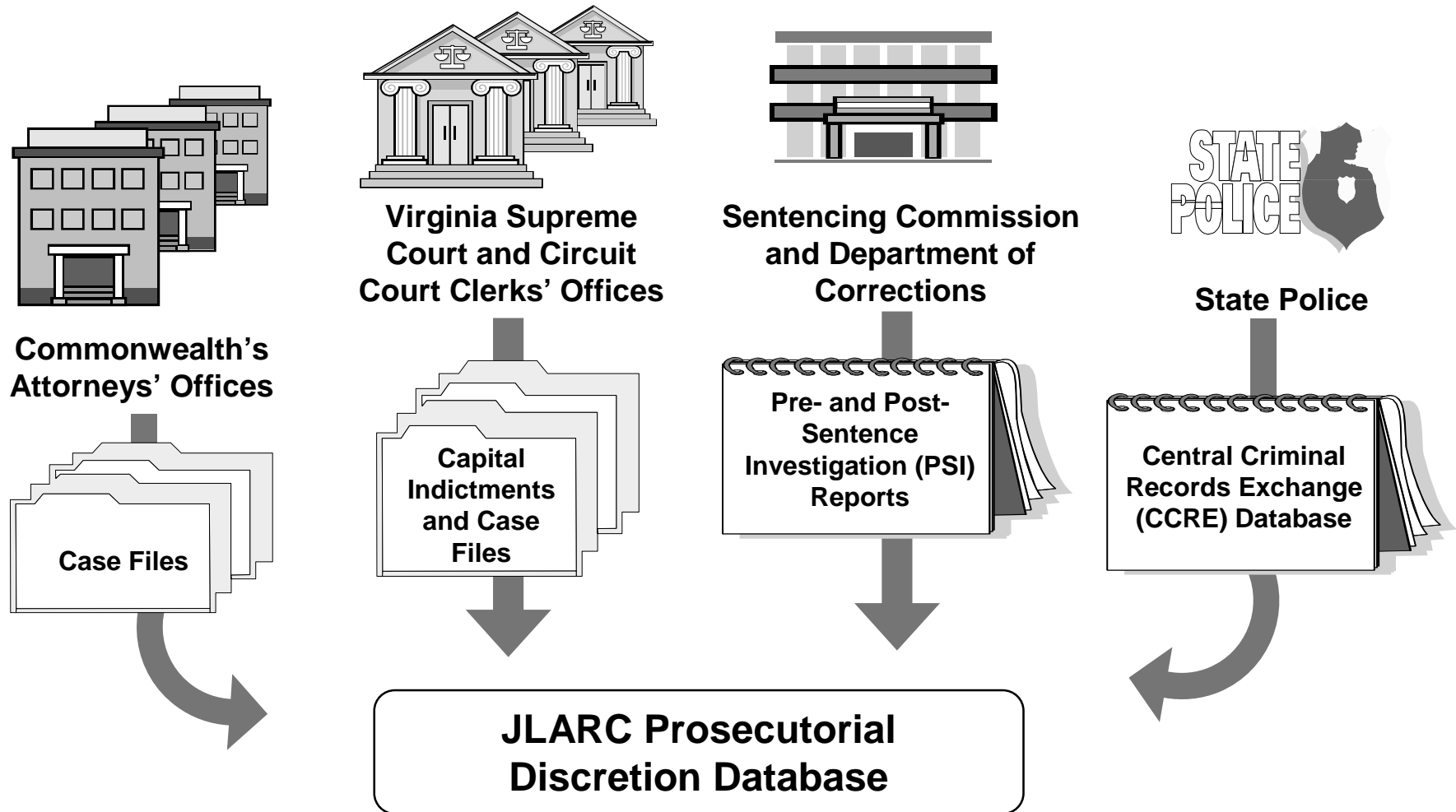
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■ Three key objectives of the study were to:

- Determine the capital murder indictment rate for persons arrested for capital-eligible murders since the General Assembly abolished parole in 1995
- Determine the proportion of the capital-eligible cases in which prosecutors decided to pursue the death penalty
- Identify the differences and similarities between those capital-eligible cases in which the death penalty was sought with those in which it was not

Data to Examine the Use of Prosecutorial Discretion Were Collected from a Number of Sources

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JLARC's Study Sample Contains 74 Percent of All Capital-Eligible Cases Statewide

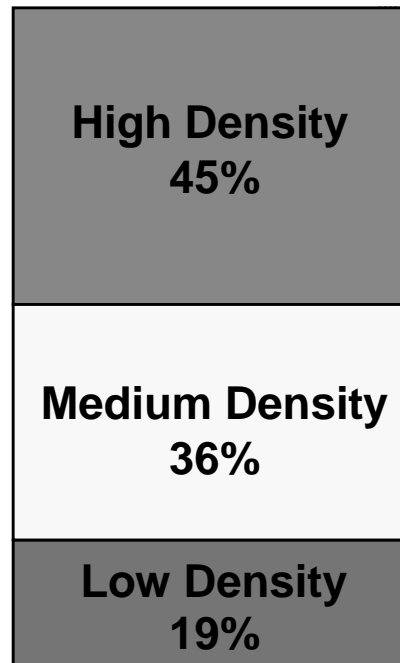
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- **From 1995 to 1999, local authorities arrested 215 persons for crimes that qualified as capital murder. JLARC staff collected demographic and adjudication data and on each of these cases.**
- **Additionally, visits were made to 31 localities to collect more detailed information on a sample of 160 of these capital-eligible cases. This represents 74 percent of all such cases statewide.**

Most Capital-Eligible Cases Are Located in High-Density (Usually Urban) Locations

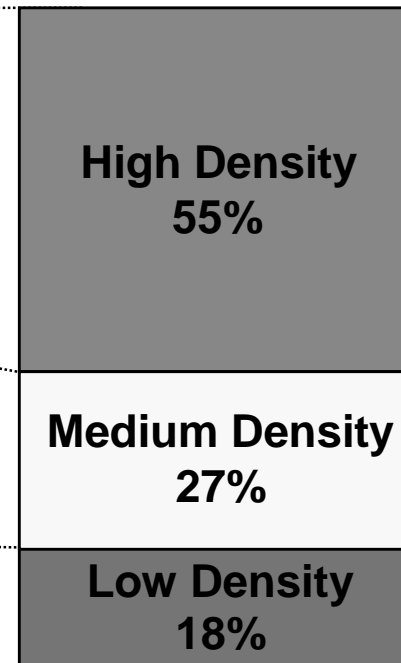
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**Percent of “Capital-Eligible” Cases
Statewide**



(N=215)

**Percent of “Capital-Eligible” Cases in
JLARC Sample**



(n=160)

Research Objectives for the Study of Judicial Review

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- **Three major study objectives guided JLARC's review of the appellate and post-conviction processes for persons who have been sentenced to death.**
 - **Provide a summary description of the flow of persons through the entire judicial review process**
 - **Document the nature of each claim submitted on appeal for persons who were sentenced to die**
 - **Determine the impact of Virginia's procedural rules on the outcomes for claims of trial error raised in the judicial review process**

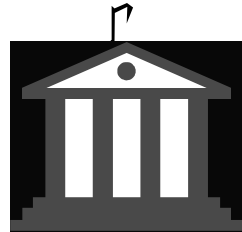
Data to Examine the Judicial Review Process Were Collected from a Number of Sources

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**Virginia Supreme
Court**

Published opinions,
Unpublished opinions,
Petitions for habeas
corpus



**United States
District Court**

Petitions for
habeas corpus,
published and
unpublished
opinions



**Fourth Circuit
Court of Appeals**

Appellants' briefs,
published and
unpublished
opinions



**United States
Supreme Court**

Petitions for Writs
of Certiorari and
published orders
and opinions



**JLARC Judicial
Review Database**

JLARC Staff Received Input from Several Groups for the Study

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- **During the course of the study, JLARC staff solicited input and comments regarding the study design and study outcomes from the following organizations:**
 - **Commonwealth's Attorneys' Association**
 - **Attorney General's Office**
 - **Criminal Law Section of the Virginia State Bar**
 - **Virginia Capital Representation Resource Center**
 - **Public Defender's Commission**
 - **Virginia Capital Case Clearinghouse**

The Issue of Quality of Counsel Could Not Be Addressed Within Parameters of this Study

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- **Based on input from the Criminal Law Section of the Virginia State Bar, it was determined that an assessment of the quality of legal counsel in defense cases was not feasible in this study.**
- **JLARC staff were able to review the disciplinary records for a representative sample of defense attorneys who have handled capital cases.**
- **The Crime Commission is presently conducting a study of the quality of legal representation which will include defense attorneys who handle capital murder cases.**

Summary of Findings

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- Since the abolition of parole in 1995, nearly eight out of every 10 persons who were arrested for a capital-eligible crime were indicted for capital murder.
- Over this same time period, Commonwealth's Attorneys have sought the death penalty for nearly three out of every 10 persons who were arrested for a capital-eligible crime.
- Contrary to some concerns, the race of neither the defendant nor the victim plays a role in the decision by local prosecutors to seek the death penalty.

Summary of Findings

(continued)

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- More than any other factor, the location of the crime (in non-urban areas), and whether the defendant was related to the victim were the factors most strongly associated with the decision of prosecutors to seek the death penalty.
- Capital murder cases that are very similar on other key facts (such as the vileness of the crime or dangerousness of the defendant, and the nature of evidence) are handled differently by Commonwealth's Attorneys in different sized jurisdictions.

Summary of Findings

(continued)

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- Regarding direct review, the Virginia Supreme Court has affirmed 93 percent of all cases in which a death sentence has been imposed in the State's circuit courts since 1977. In affirming these death sentences, the Court considered and rejected on their merits 83 percent of all claims of trial error.
- None of the 119 death sentences reviewed by the Virginia Supreme Court were determined to be excessive or disproportionate. In making these determinations, the Virginia Supreme Court appears to have narrowly applied the statutes defining proportionality review in Virginia.

Summary of Findings

(continued)

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- At the State and federal habeas corpus stages of the review process, the recognized rate of trial error in cases where defendants were sentenced to death was only two and four percent respectively.
- This may be partially related to the fact that more than three of every ten claims of trial error made by defendants during these phases of post-conviction review were rejected because they violated procedural restrictions.
- This indicates that through the application of the doctrine of procedural default, post conviction review for death row inmates in Virginia has been expedited by the courts and that many claims raised by these inmates are not considered on their merits.

Summary of Findings

(continued)

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- More than one-third of all capital defendants on death row made a final appeal for clemency based on a claim of innocence. In 18 percent of these cases, some form of clemency was granted.
- Whether the clemency process is a reliable safeguard against the execution of an innocent prisoner cannot be determined because of a lack of records. Much of the process occurs beyond public view and is thereby shielded from serious scrutiny.

Presentation Outline

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- ☐ Study Overview and Summary of Findings
- ☒ Background on Capital Punishment
- ☐ Prosecution of Capital-Eligible Cases
- ☐ Judicial Review of Capital Cases
- ☐ Executive Clemency
- ☐ Conclusion

Prior to the Reforms Established in the Mid-1970s, Virginia's System of Capital Punishment Was Seriously Flawed

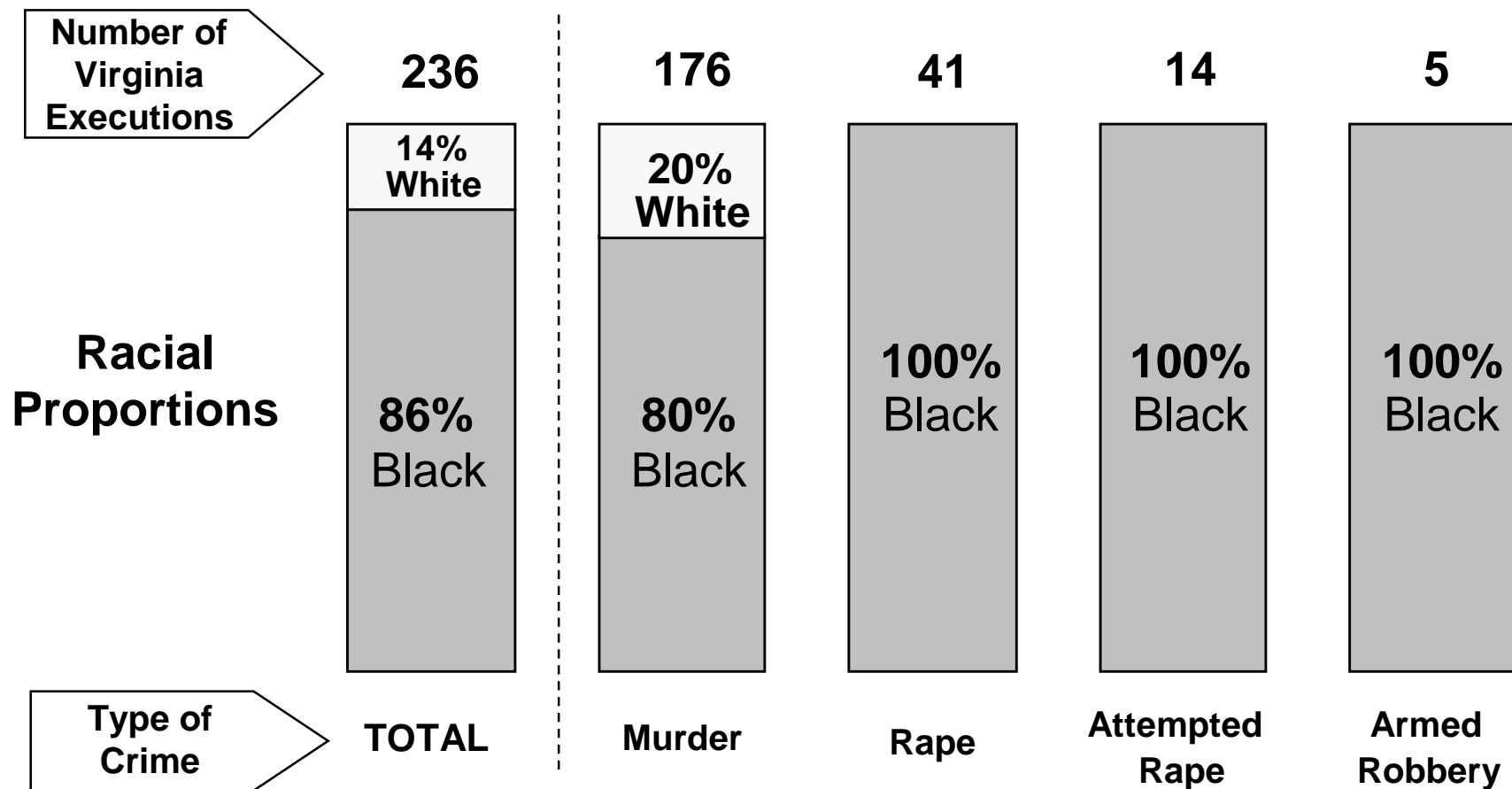
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- **Prior to 1972, Virginia was one of 42 states that permitted the execution of criminals.**
- **Three key elements of Virginia's system that would later require the attention of the General Assembly were:**
 - **the broad scope of the capital punishment statutes,**
 - **the unlimited discretion granted juries when deciding capital cases, and**
 - **the absence of automatic judicial review for persons sentenced to death.**

Racial Disparities in Early State Executions Raised Serious Questions Regarding the Integrity of Virginia's System

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Executions in Virginia by Race, 1908 to 1962 Aggregated



In Response to United States Supreme Court Rulings, Virginia Reformed Its System

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- **In a 1972 landmark case – *Furman v. Georgia* – the United State Supreme Court invalidated capital punishment statutes nationwide and the death sentences of more than 600 inmates across the country were commuted to life in prison.**
- **In response to this ruling, the 1975 Virginia General Assembly greatly narrowed the types of murder that would qualify as a capital crime in Virginia.**

In Response to United States Supreme Court Rulings, Virginia Reformed Its System

(continued)

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- **Specifically, first-degree murder would constitute capital murder only if the murder was committed:**
 - **in the commission of abduction**
 - **as a part of a contract killing**
 - **by an inmate in a penal institution**
 - **in the commission of a robbery with a deadly weapon, or**
 - **against a law enforcement officer while the officer was performing his duty**

In Response to United States Supreme Court Rulings, Virginia Reformed Its System

(continued)

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- **Two years later, partly in response to two additional United States Supreme Court rulings, the General Assembly further modified its death penalty statutes in three important ways:**
 - **First, execution as the sole punishment for a capital crime was eliminated**
 - **Second, a bifurcated trial process was established creating one trial to determine the guilt or innocence of the accused and a second trial to determine punishment**
 - **Third, the General Assembly provided for the automatic review of all death penalty convictions by the State Supreme Court**

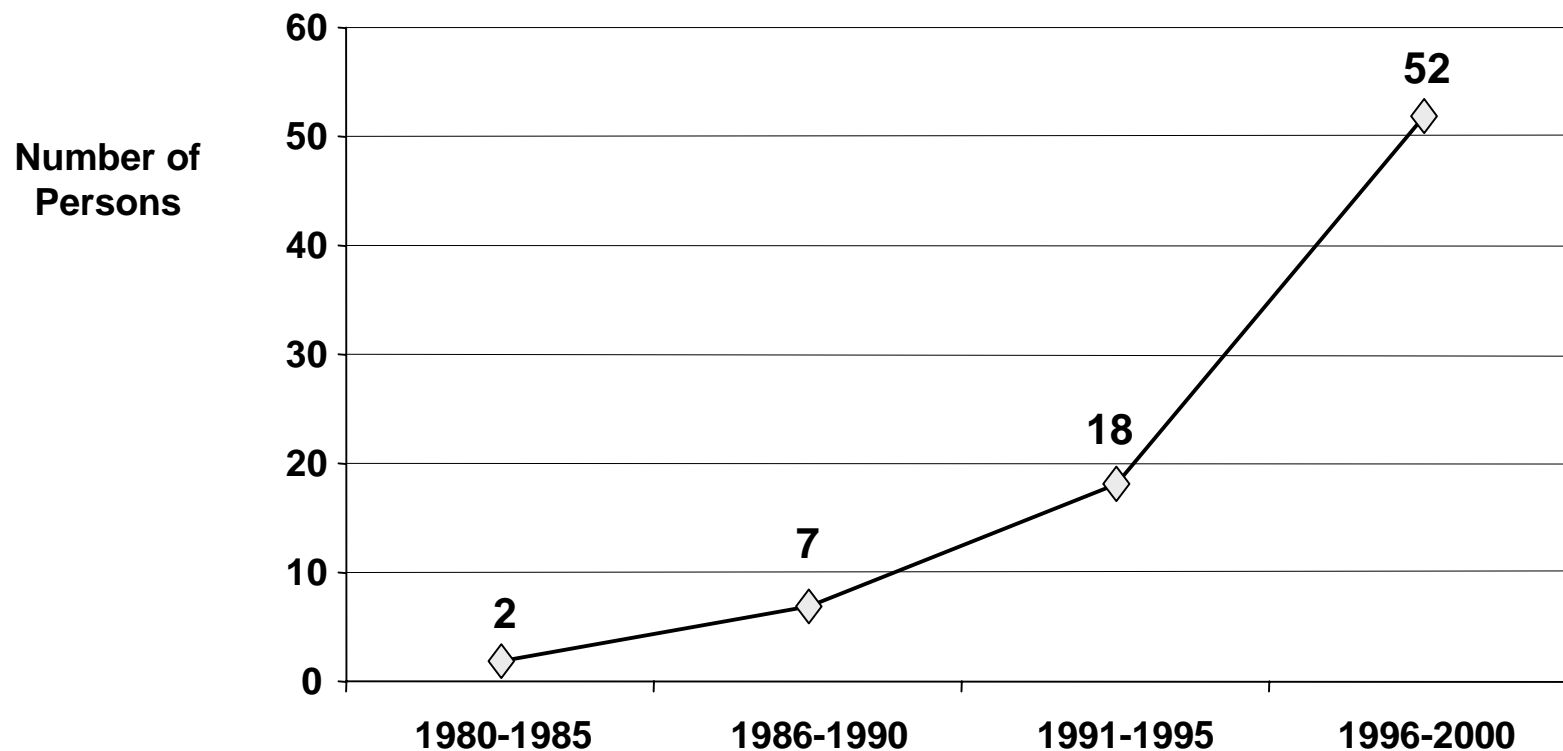
Death Penalty Expanded Under New Statutory Scheme

24

- In the 24 years since 1977, Virginia has modified or added to the State's definition of capital murder 14 times. Now there are more than 20 different types of murder that qualify as a capital crime.
- Included among the offenses that when committed along with first-degree murder can elevate the murder to capital murder are:
 - Rape or attempted rape
 - Robbery or attempted robbery
 - Abduction with the intent to defile or extort money
 - Murder for hire
 - Murder of a law enforcement officer performing official duties
 - Murder of person age 14 or less by an adult
 - Murder of a pregnant women with the intent to cause the involuntary termination of her pregnancy

Number of Executions in Virginia Has Increased Over the Last 20 Years

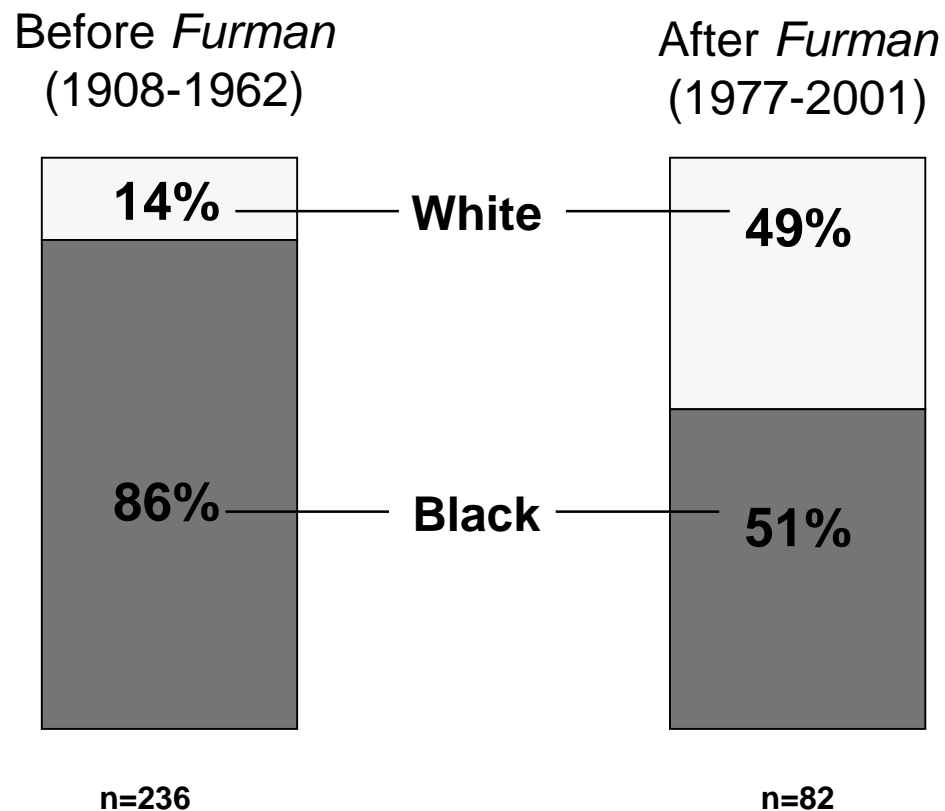
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Note: Three persons were executed in 2001

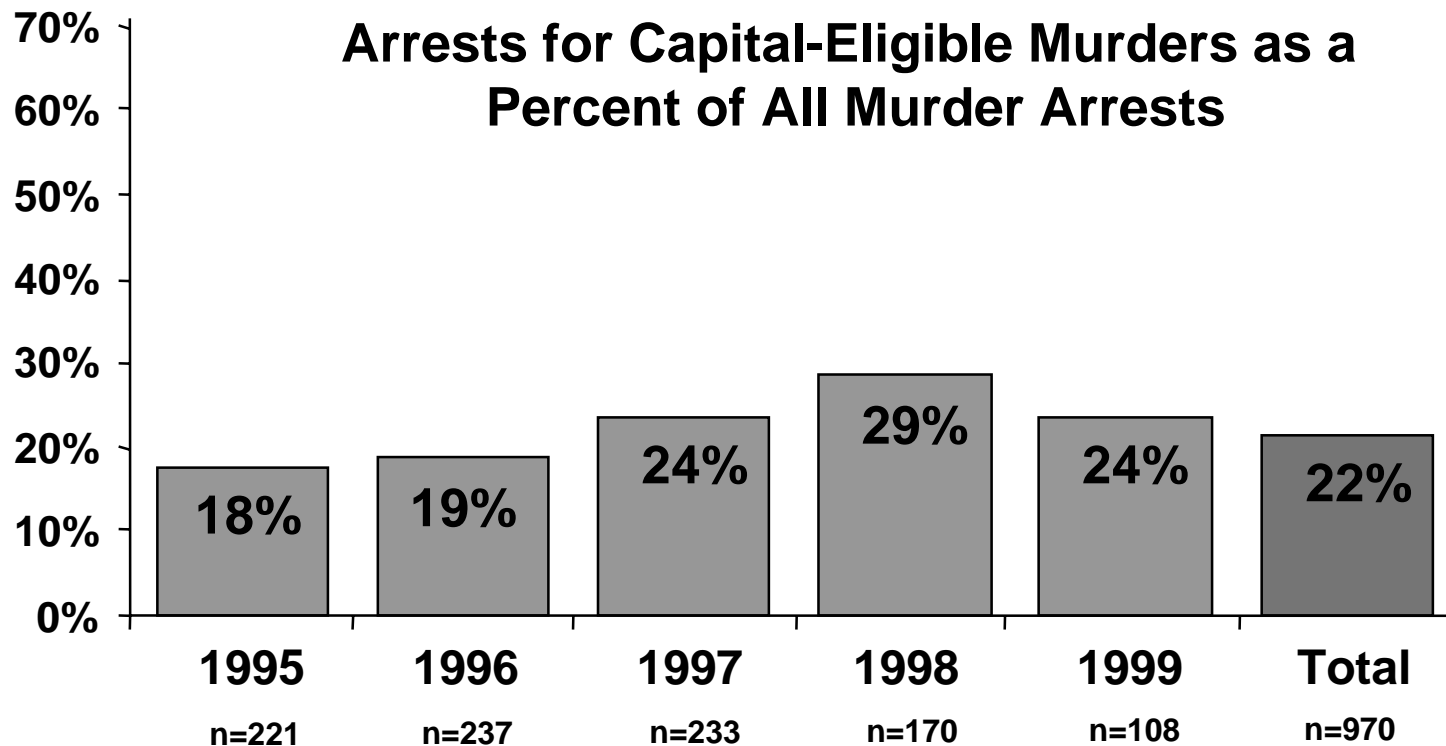
Racial Disparities in State Executions Have Moderated But Questions Remain

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There Has Been an Upward Trend in Arrests for Capital-Eligible Murders Since the Abolition of Parole

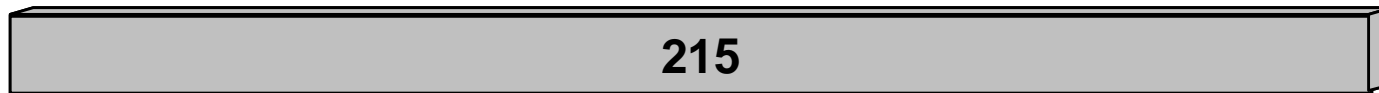
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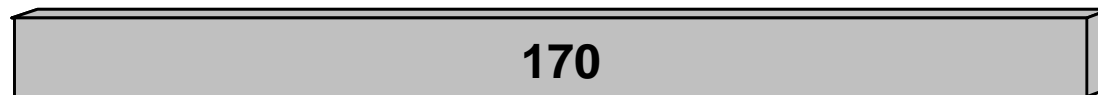
Since the Abolition of Parole, Only a Small Proportion of Persons Who Were Arrested for Capital Murder Received a Death Sentence

28

Of 970 cases where there was an arrest for murder from 1995 to 1999 . . .



...were for Capital Eligible Offenses



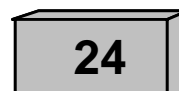
...resulted in a Capital Murder Indictment



...were Prosecuted as Death Eligible cases



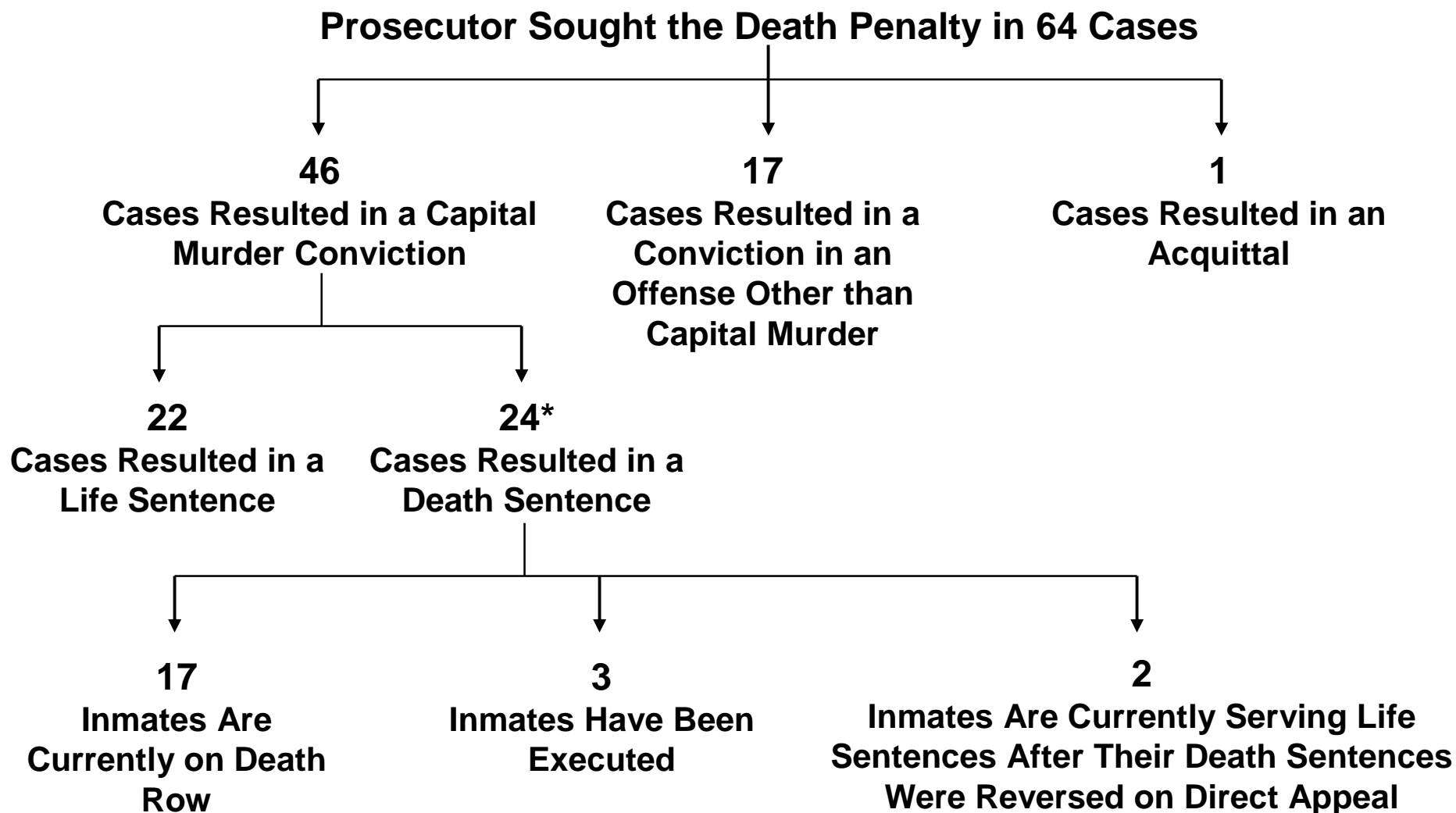
...resulted in a Capital Murder conviction



....were Given a Death Sentence
(24 cases; 22 people)

Prosecutors Sought the Death Penalty in 64 Capital-Eligible Cases from 1995 to 1999

29



*24 Cases, 22 Inmates

Presentation Outline

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- ☐ Study Overview and Summary of Findings
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- ☐ Judicial Review of Capital Cases
- ☐ Executive Clemency
- ☐ Conclusion

Commonwealth's Attorneys Must First Decide Whether to Seek a Capital Murder Indictment in Capital-Eligible Murder Cases

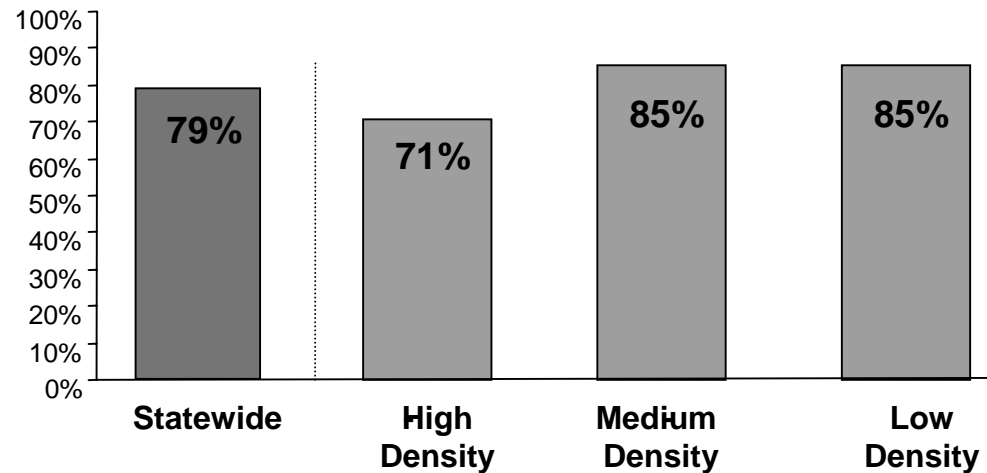
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- **Commonwealth's Attorneys are the initial gatekeepers to Virginia's system of capital punishment.**
- **Therefore, after an arrest is made for a crime that qualifies as capital murder, Commonwealth's Attorneys must first decide whether the alleged offender will be indicted for capital murder or face a lesser charge.**

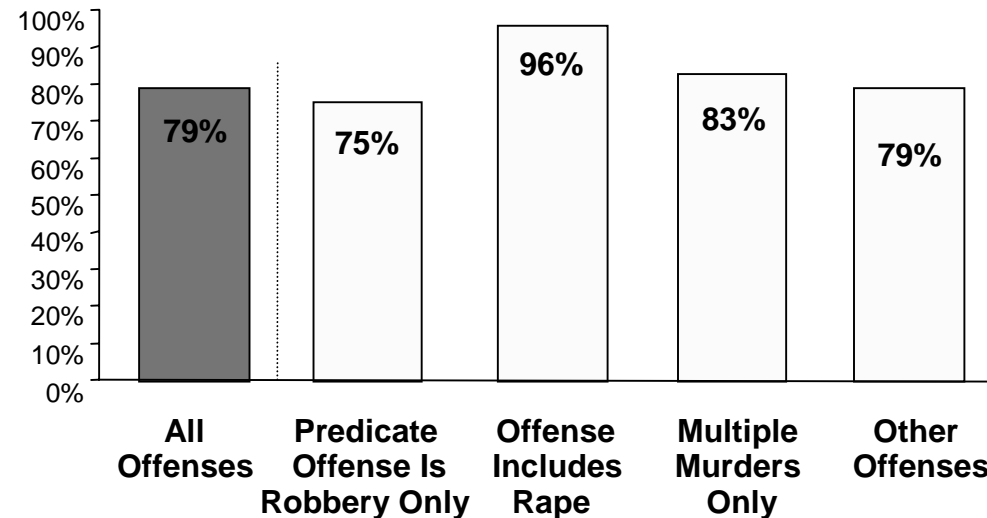
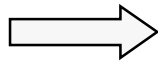
Capital Murder Indictment Rates Vary by Type of Jurisdiction and Type of Capital Offense

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**Capital
Indictment
Rate by Type
of Jurisdiction**

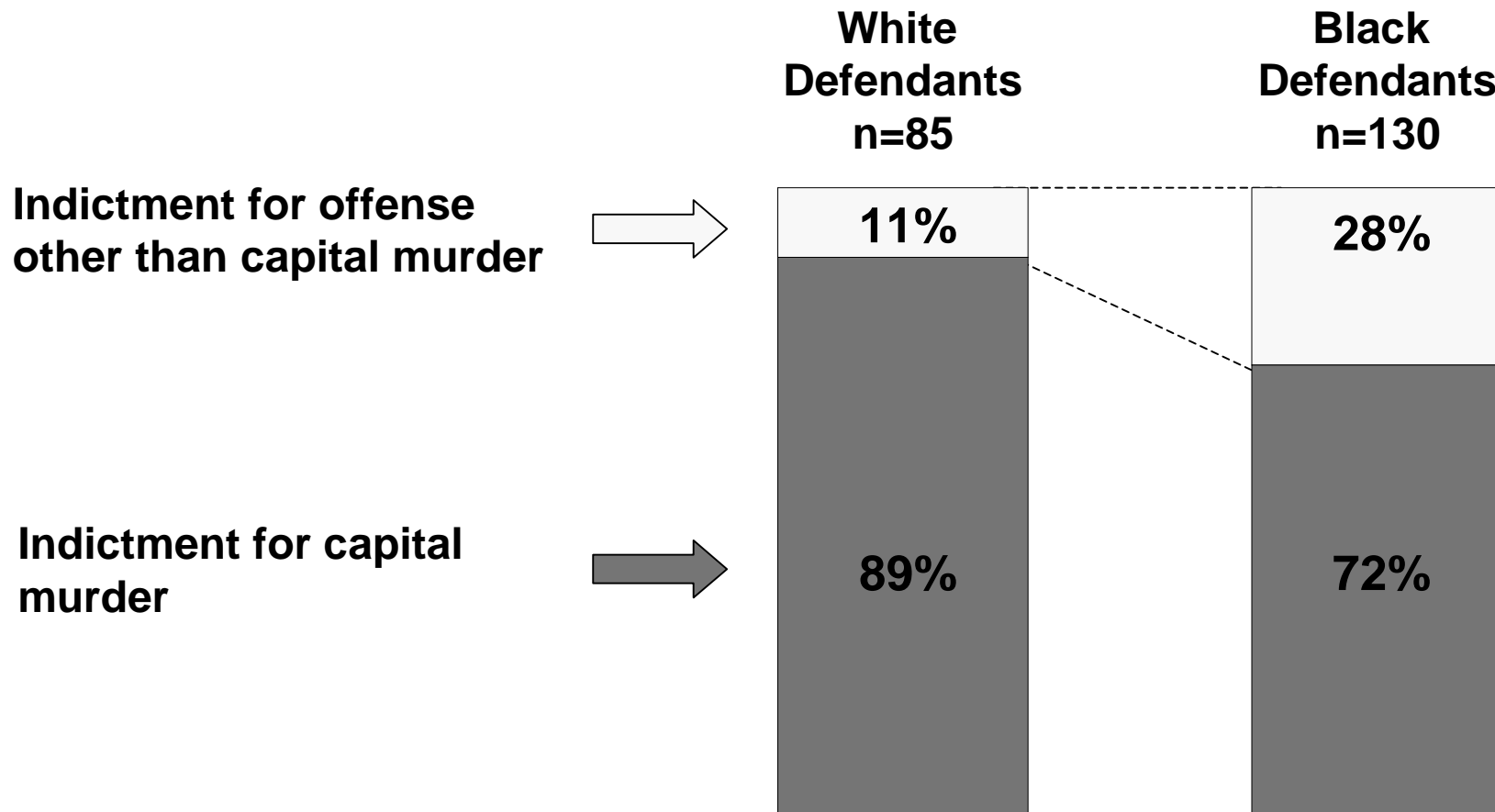


**Capital
Indictment
Rate by Type
of Offense**



White Defendants Face a Higher Capital Murder Indictment Rate than Blacks

33



Location of the Murder and Gender Are Most Strongly Associated with Decision to Seek a Capital Murder Indictment

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- **Based on the results of regression analysis, this study found that the defendants who were arrested for killing a female were over six times more likely to be indicted for capital murder.**
- **These results also indicate that defendants who were arrested for a capital-eligible murder in high-density jurisdictions were less likely to be indicted for capital murder than their counterparts who were arrested in other jurisdictions.**

Commonwealth's Attorneys Decide Whether Capital Murder Defendants Will Face the Death Penalty

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- **If the defendant is indicted for capital-murder, Commonwealth's Attorneys must next decide whether they will seek the death penalty.**
- **In making this determination, Commonwealth Attorneys consider whether the case is “death – eligible.” Capital murder cases are considered “death-eligible” if:**
 - **there is evidence that the defendant is a future danger to society, or**
 - **the murder for which the defendant is charged can be considered vile.”**
- **Commonwealth's Attorneys must prove the existence of least one of these “aggravators” during the sentencing phase of the trial if they hope to secure a death sentence.**

Distinguishing “Death Cases” from “Non-Death Cases”

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- **A major goal of this study was to determine how those capital-eligible cases in which Commonwealth Attorneys sought the death penalty differed from those in which they did not.**
- **To conduct this aspect of the analysis, JLARC staff categorized each capital-eligible case included in the study as either a “death case” or “non-death case” notwithstanding whether a capital murder indictment was filed.**

Distinguishing “Death Cases” From “Non-Death Cases” (continued)

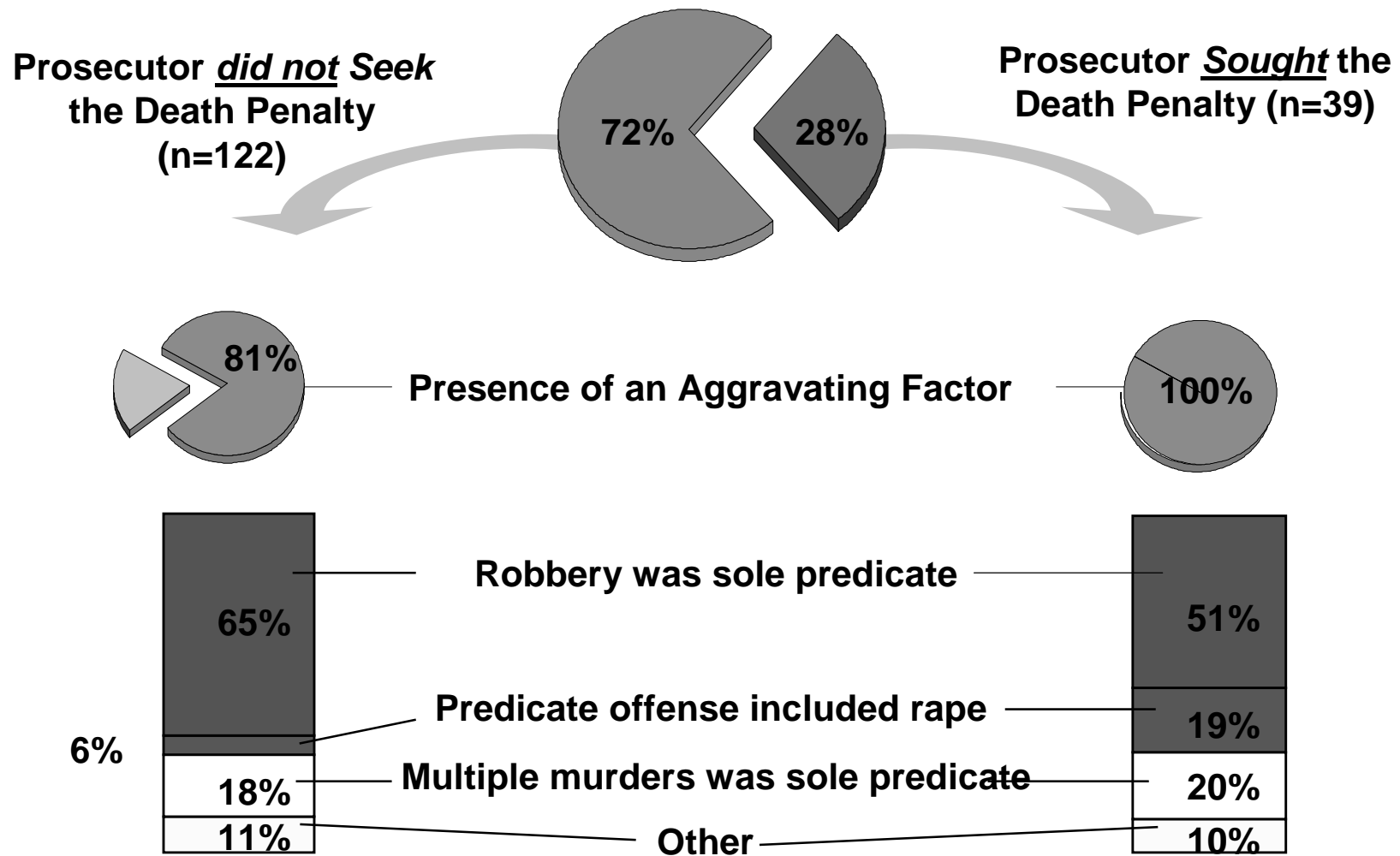
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- **“Death cases” were identified as those capital-eligible cases in which**
 - the defendant was convicted of capital murder and received a sentencing hearing in which the prosecutor asked the judge or jury for a sentence of death or,
 - cases where the prosecutor death-qualified the jury in preparation for the penalty phase of the trial, but the defendant was either acquitted or convicted of a lesser charge.

- **“Non-death cases” were defined as those capital-eligible cases where:**
 - the defendant was indicted for capital murder but the local prosecutor informed the court that he would not be seeking the death penalty; or,
 - the defendant was indicted for first-degree murder; or,
 - a plea agreement was reached prior to conviction.

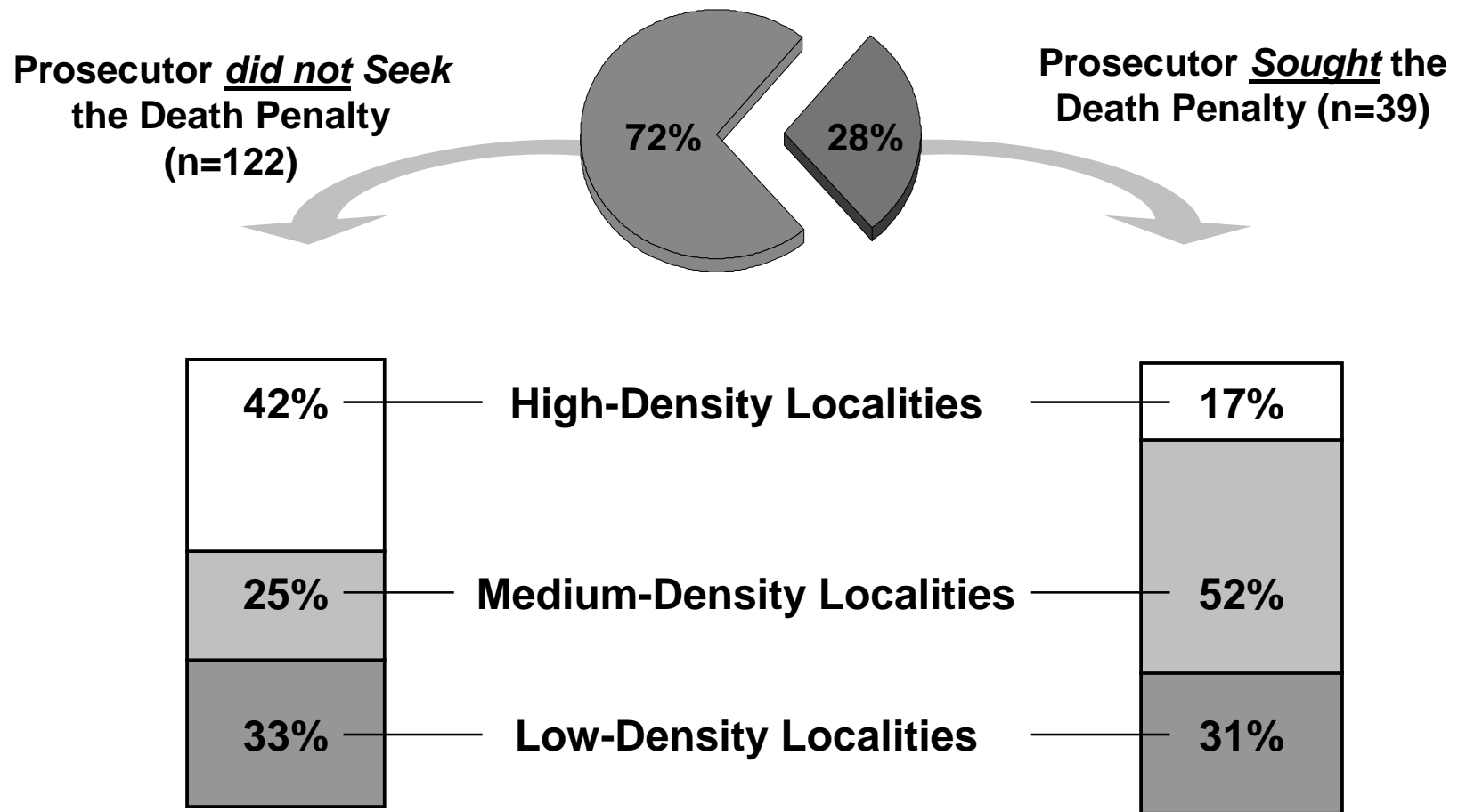
There Are Some Differences in “Death Cases” Compared to “Non-Death Cases”

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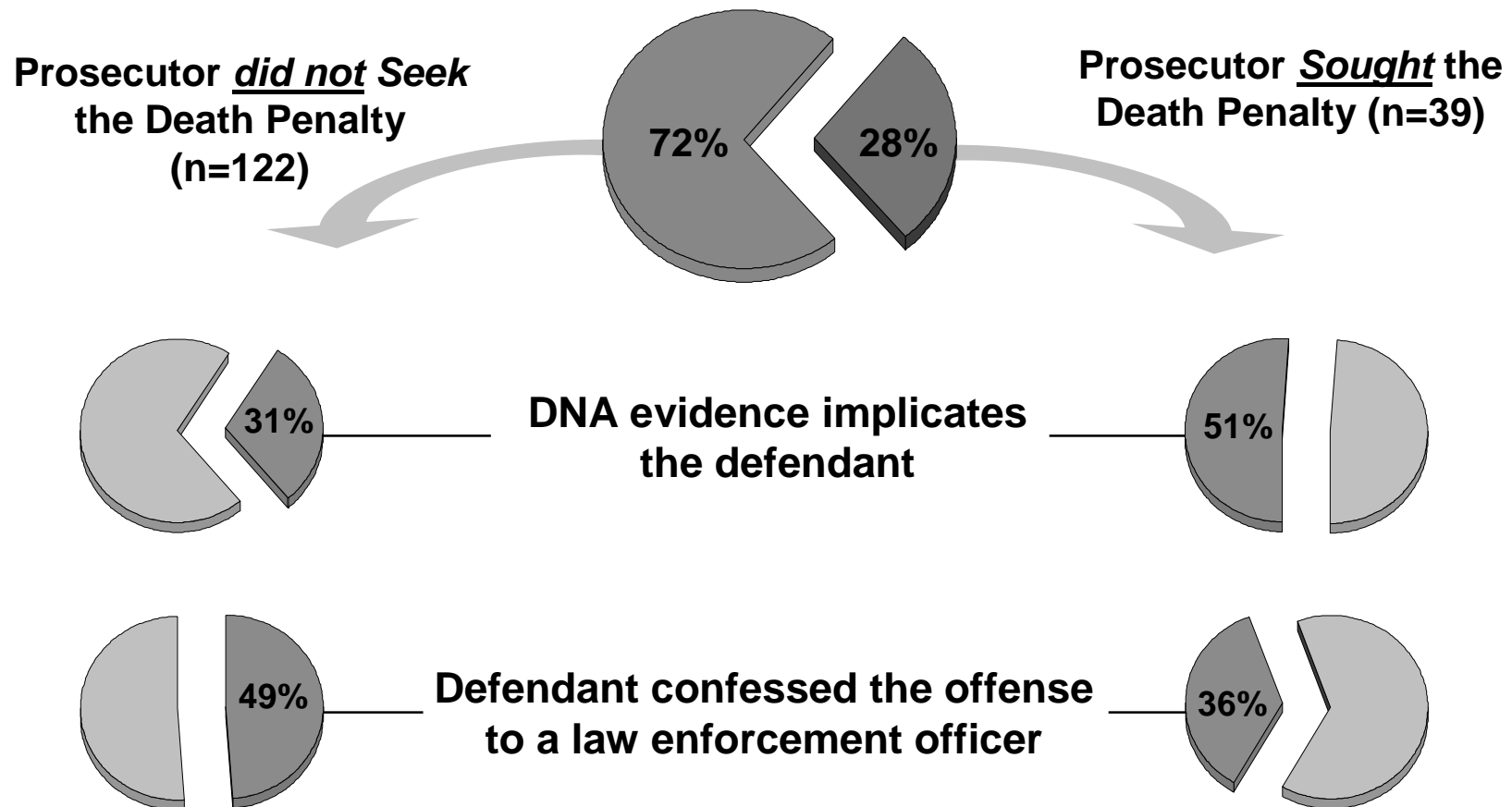
There Are Some Differences in “Death Cases” Compared to “Non-Death Cases” (continued)

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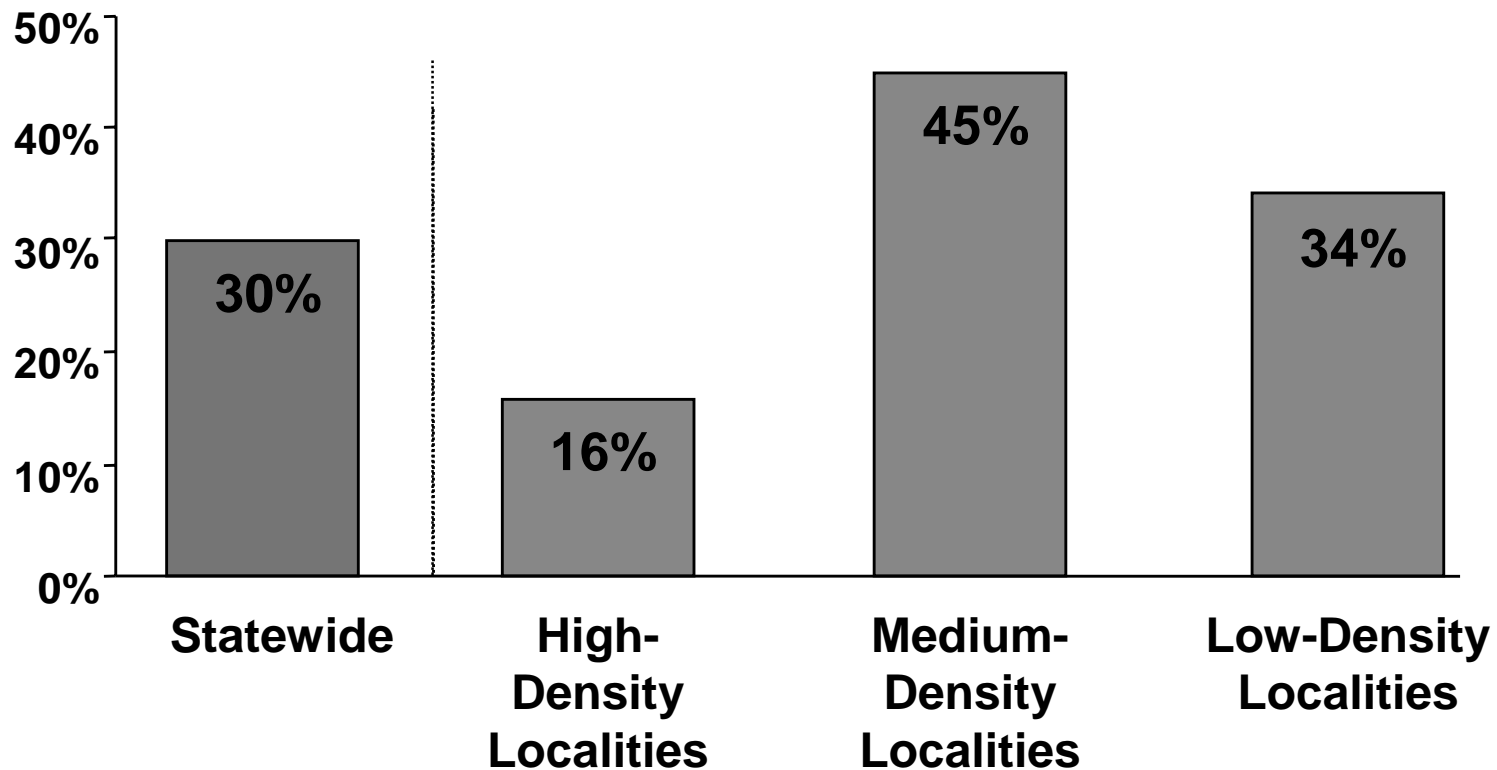
There Are Some Differences in “Death Cases” Compared to “Non-Death Cases” (continued)

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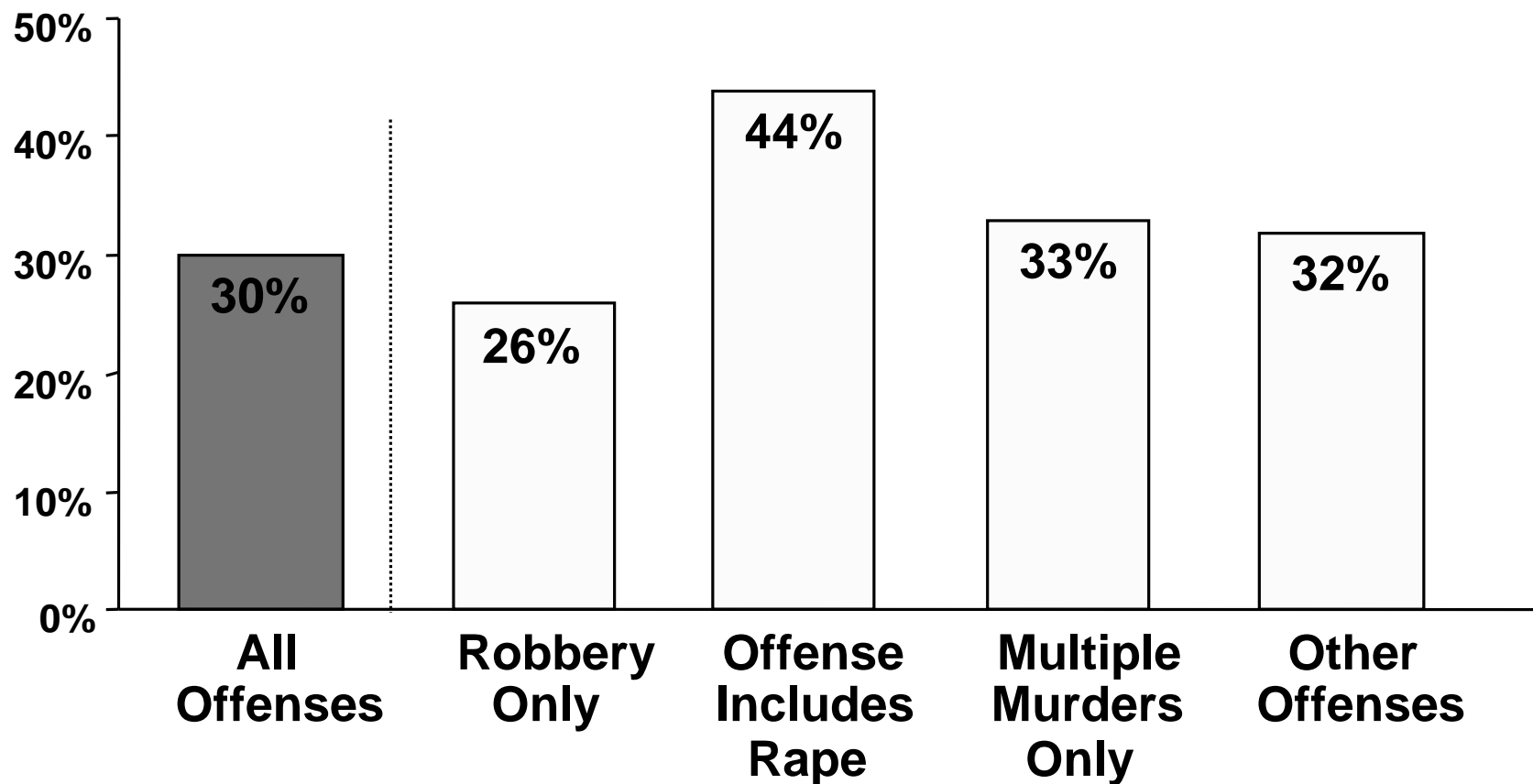
Death Prosecution Rates Are Higher In Medium-Sized (Suburban) Localities

41



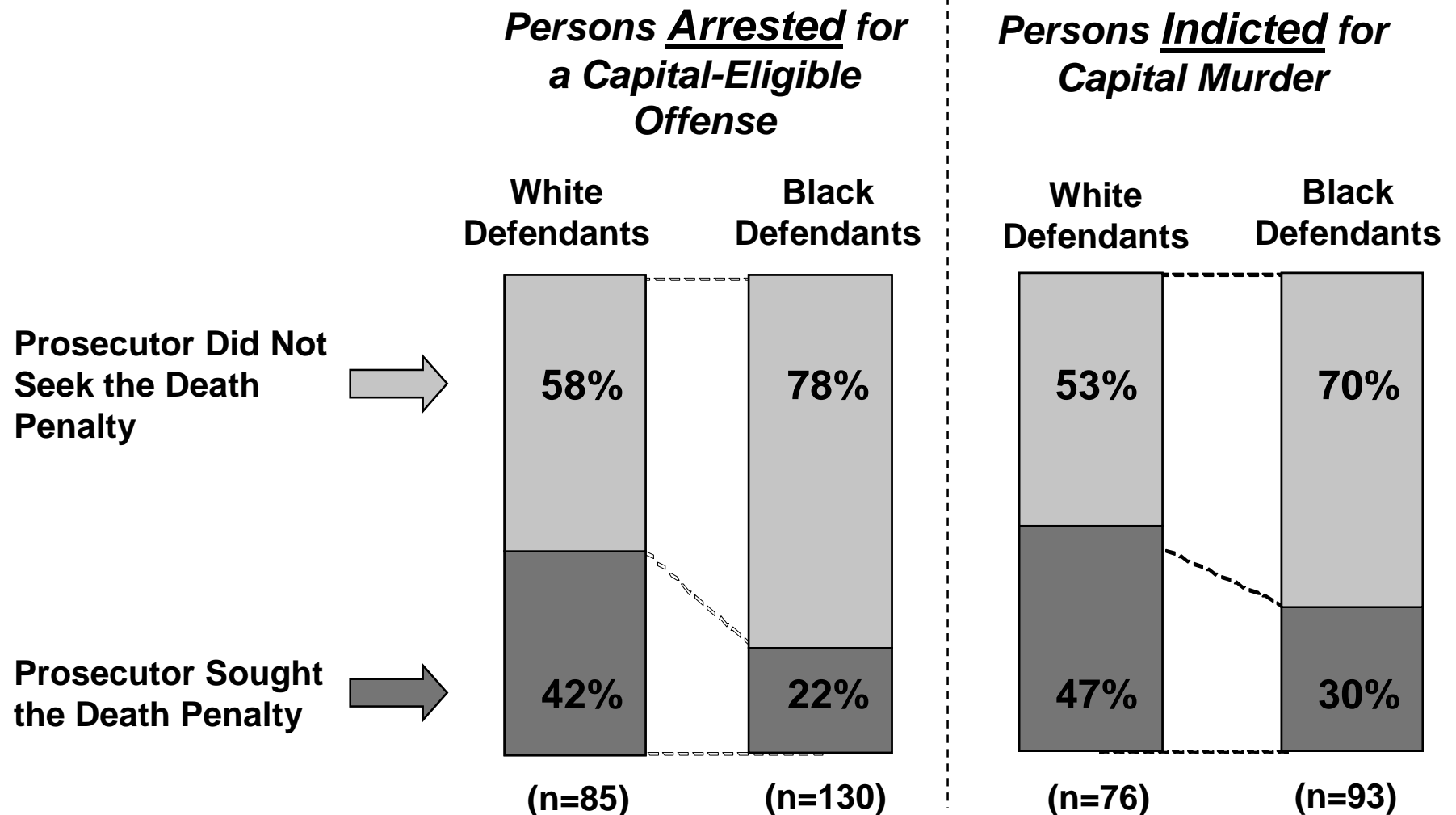
Death Prosecution Rates Vary By Type of Predicate Offense

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White Defendants Faced Death Prosecutions at Higher Rates than Blacks

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The Observed Differences in Death Prosecution Rates Raise Several Important Questions

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- **The differences observed in the death prosecution rates and the characteristics of “death cases” versus “non-death cases” raise the following questions:**
 - **What factors are most strongly associated with the Commonwealth’s Attorneys’ decisions to seek the death penalty in capital-eligible cases?**
 - **Are these factors specific to the case (such as the vileness of the crime); external to the case (such as the type of jurisdiction in which the crime was committed); or extra-legal (such as the defendant’s race)?**

Variables Used in Analysis of Prosecutorial Discretion

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Case-Specific Factors

- Offense involved rape*
- DNA evidence*
- Eyewitness testimony*
(Solid or not solid)
- Ballistics evidence
- Fingerprint evidence
- Witnesses to the circumstances of the offense
- Witnesses to admissions
- Confession
- Accumulation of evidence

*Included in the final regression analysis

Extra-legal Factors

- Race of the victim*
- Race of the defendant*
- Defendant & Victim race interaction*
- Sex of the victim*

Factors External to Case

- Location of offense*

Victim Characteristics

- Character*
- Relationship to the defendant*

Location of the Murder Is Most Important Factor in Decision to Seek the Death Penalty

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- **Based on the results of regression analysis, this study found that the location of the offense has the strongest effect on the likelihood that a person who commits a capital-eligible crime will face the death penalty.**
 - **Commonwealth's Attorneys in high-density (usually urban) jurisdictions are much less likely to seek the death penalty for capital-eligible cases where at least one of the required aggravators is present.**
- **Whether the victim was related to the defendant significantly impacted the probability that a prosecutor would seek the death penalty in a capital-eligible case.**

Significant Inconsistencies Are Evident in Statewide Application of the Death Penalty

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- **Although prosecutors' decisions regarding whether to seek the death penalty in capital-eligible cases differ based on the type of jurisdiction, no real distinctions were observed in the types of capital cases across jurisdictions.**
- **This means that capital murder cases that are very similar on other key facts (such as the vileness of the crime or dangerousness of the defendant, and the nature of evidence) are handled differently by Commonwealth's Attorneys in different-sized jurisdictions.**

Case Example Illustrates Inconsistencies in Application of Death Penalty Statutes

Case Example

Column A – Low-Density Locality

A white male abducted a white woman from her place of work, took her to a remote location, raped her, slit her throat and left her in a river. She died as a result of her wounds while crawling away from the river.

Evidence of Guilt

When in custody, the defendant confessed to a law enforcement officer, DNA implicated him, and there was a witness to the circumstances of the offense and a witness who heard him admit to the offense.

Evidence of Aggravation

*The victim suffered sexual abuse and throat slashing.
The defendant had no prior violent felony convictions.*

The local prosecutor argued for the death penalty

Column B – Medium-Density Locality

A white male raped his estranged wife and then stabbed and strangled her to death because he thought she was having a sexual relationship with a black man. After she was dead, he defiled her body, and then asked a neighbor to call the police.

Evidence of Guilt

When in custody, the defendant confessed to a law enforcement officer, DNA implicated him, and there was a witness who heard him admit to the offense.

Evidence of Aggravation

*The victim suffered sexual abuse, stab wounds, and strangulation.
The defendant had no prior violent felony convictions.*

The local prosecutor argued for the death penalty

Column C – High-Density Locality

A black male raped and stabbed to death a white female in her home after one of the men he was with forced his way into her apartment.

Evidence of Guilt

When in custody, the defendant confessed to a law enforcement officer, DNA evidence implicated him, and there was an eyewitness to his offense (co-defendant).

Evidence of Aggravation

*The victim suffered sexual abuse and multiple stab wounds.
The defendant had a rape conviction at the time of his arrest for the instant offense.*

The local prosecutor entered into a plea agreement– defendant pled guilty to capital murder

Inconsistencies in Application of Death Penalty Raise Public Policy Questions

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- The problems with capital punishment that are illustrated in these findings pose significant policy challenges. On the one hand, no viable system of capital punishment can be sustained without vesting Commonwealth's Attorneys with the discretionary authority they need to prosecute these difficult and troubling cases.
- Conversely, it must be recognized that this discretion, which is so needed to ensure that the system is operated with a sense of proportion, will generate outcomes that cannot be easily reconciled on the grounds of fairness.
- Thus, as the General Assembly deliberates the issues surrounding the use of the death penalty, the key question that must be answered is whether some disparate outcomes can be accepted in a system where the ultimate sanction is execution.

Presentation Outline

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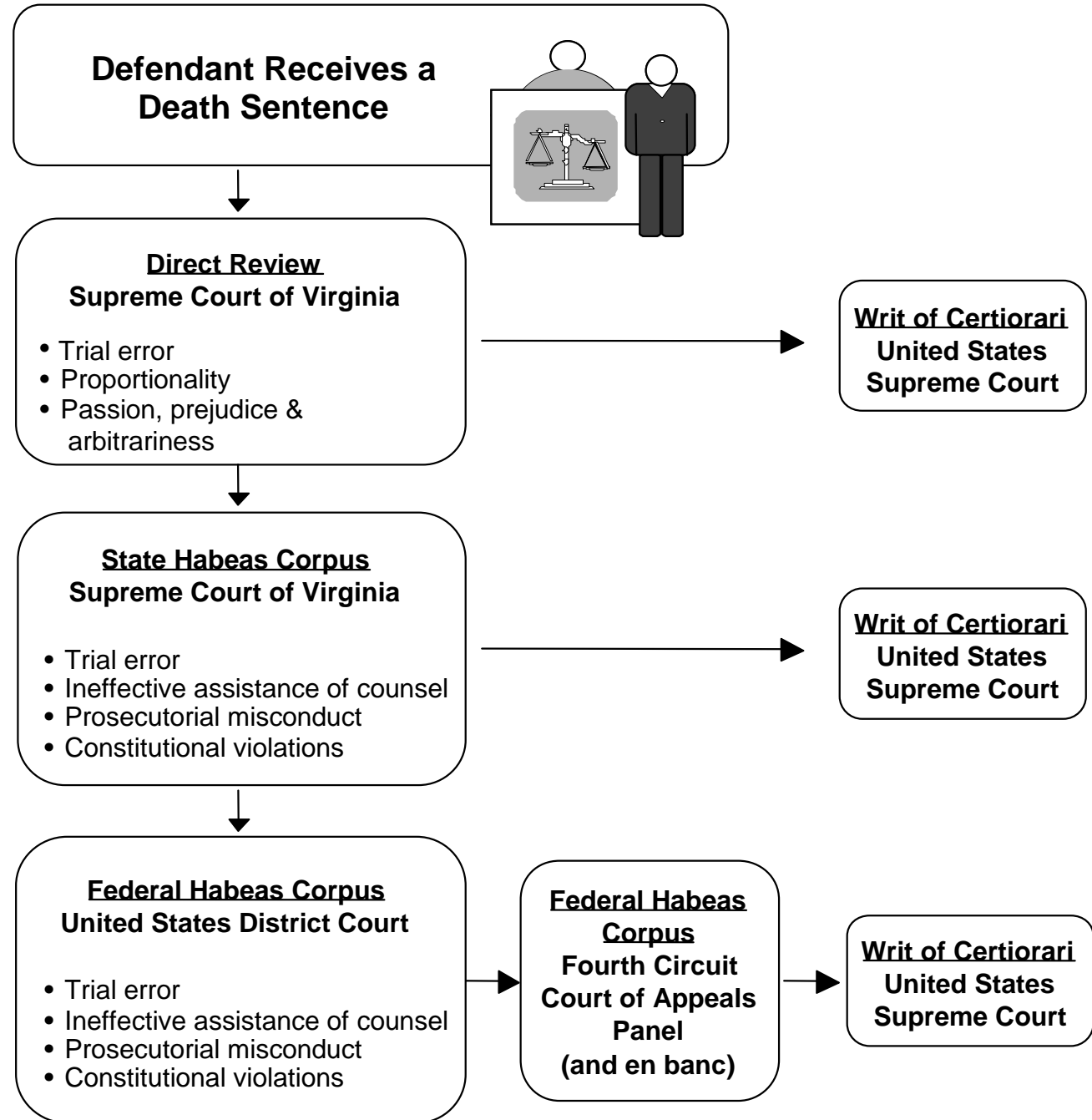
- ☐ Study Overview and Summary of Findings
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Judicial Review for Persons Sentenced to Death

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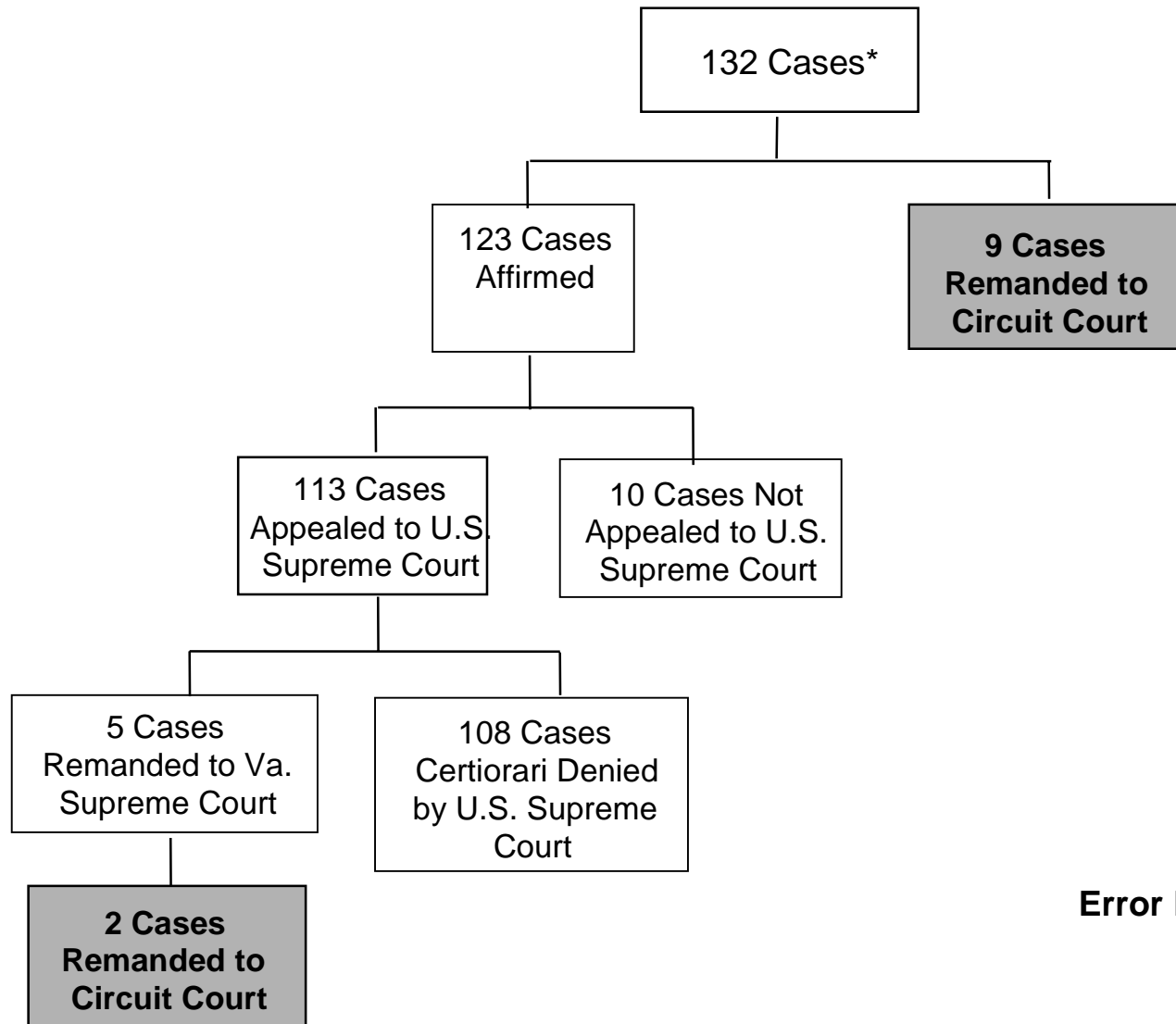
- One of the cornerstones of America's criminal justice system is the process of judicial review. The purpose of this review is not to retry cases or consider new evidence, but to ensure that each defendant received a fair trial.
- Although this review is important to all criminal defendants, it is vital to those who are convicted of capital murder and receive sentences of death.
- In reviewing capital cases, State and federal courts must balance the defendant's right to appeal with the State's interest in finalizing judgments and imposing the applicable sentences.

There Are Several Levels of Judicial Review for Persons Sentenced to Death



Since 1977, the Virginia Supreme Court Has Affirmed 93 Percent of All Death Sentence Verdicts Considered During Direct Review

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Error Rate = 8%

Claims of Trial Error Raised at Direct Review May Be Rejected by the Virginia Supreme Court for a Number of Reasons

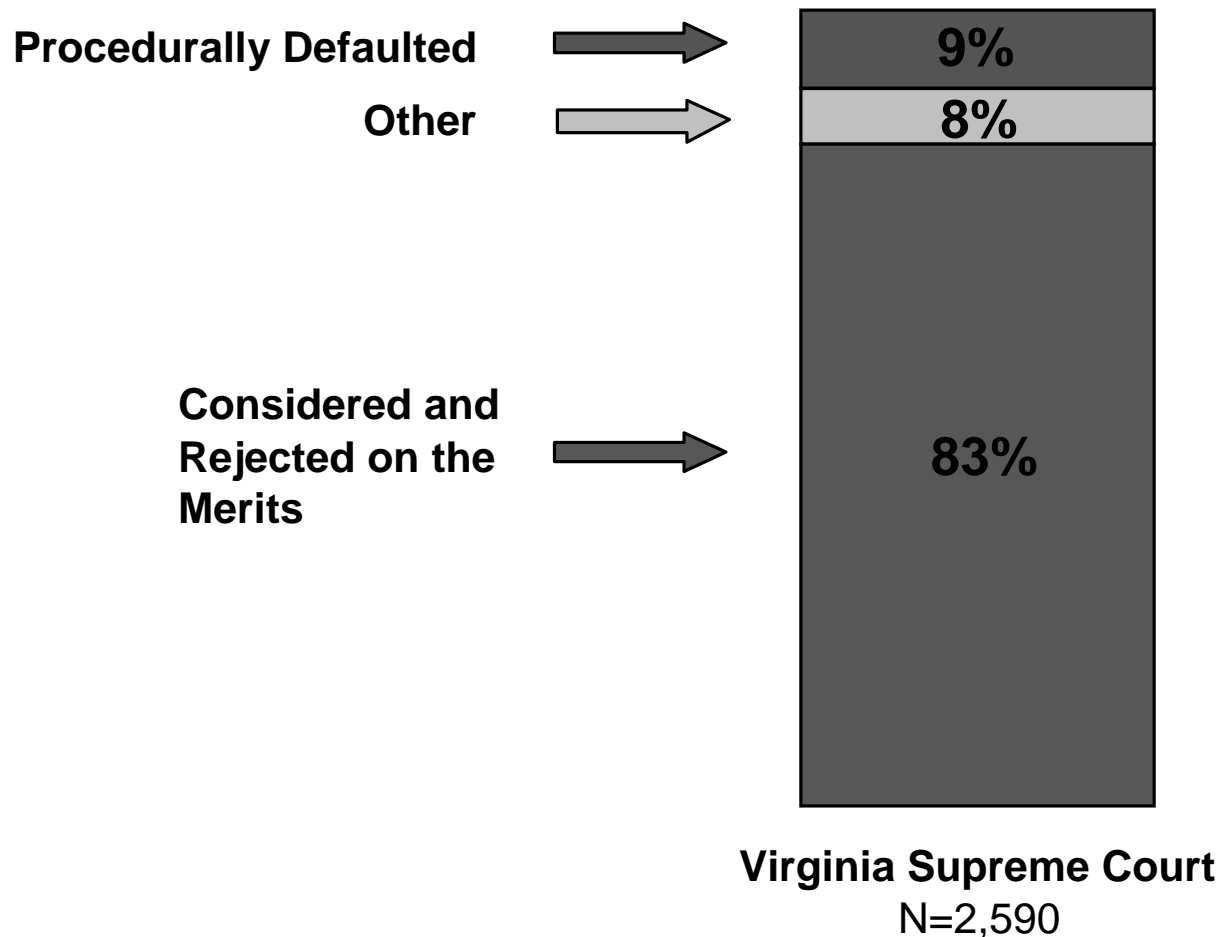
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- **In considering claims of trial error in capital murder cases the Virginia Supreme Court may:**
 - **Deny these claims on their merit**
 - **Deny the claim because the issue was not raised at trial – procedural default**
 - **Deny the claim because the issue was not raised at trial but with a note that the claim would have been rejected on its merits if it were not procedurally defaulted**
 - **Deny the claim for other reason such as the failure by the lawyer to brief the issue**
- **One criticism of the court has been that it rigidly applies its rules of procedural default thereby blocking legitimate claims of trial error from review.**

Most Claims of Trial Raised at Direct Review Are Rejected by the Virginia Supreme Court on the Merits

55

Disposition of Claims by Court



Statute Requires the Virginia Supreme Court to Determine Whether Death Sentences Are Excessive

56

- **Another component of the direct review of death sentences by the Virginia Supreme Court is what is referred to as “proportionality review.”**
- **This aspect of the review process was established by the General Assembly as an intended safeguard against the imposition of death sentences that are disproportionate or excessive.**
- **To facilitate this review, the Supreme Court has been given the authority to accumulate records of other capital murder cases in which life sentences were imposed. These cases can then be compared to similar capital cases in which a death sentence was imposed to determine whether the sentence of death in the case at bar was excessive.**

The Virginia Supreme Court Appears to Narrowly Define Proportionality Review

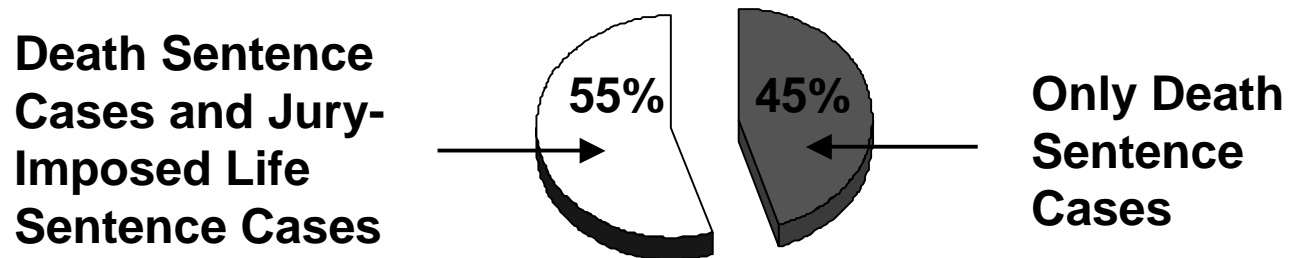
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- **There are two apparent problems with the methods used by the Virginia Supreme Court to conduct sentence review.**
- **First, for 45 percent of all cases in which sentence review has been conducted since 1977, the opinions of the Court seem to indicate that capital cases in which juries imposed life sentences were not used in the review.**

The Virginia Supreme Court Appears to Narrowly Define Proportionality Review

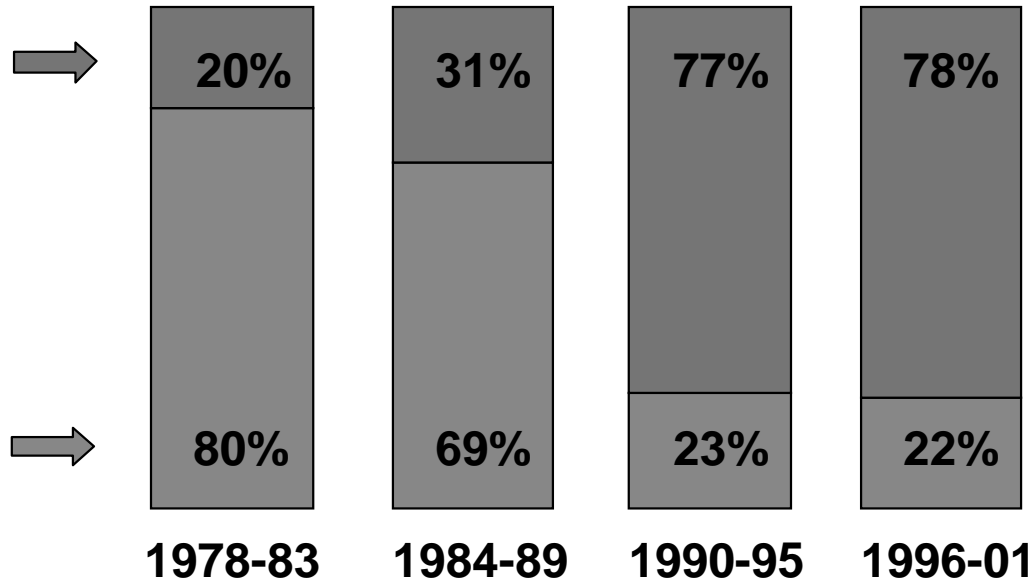
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Death Sentence and Life Sentence Cases Used

Only Death Sentence Cases Used



The Virginia Supreme Court Appears to Narrowly Define Proportionality Review

(continued)

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- **Second, even when the Court included capital life cases in its sentence review for a given case, the opinions of the court appear to indicate that a “particular emphasis” is given to other cases in which a sentence of death was imposed.**
- **Based on this methodology, it is possible for the Court to conclude that a particular death sentence is not excessive, even if in a majority of similar cases, juries generally returned a verdict of life in prison.**

Proportionality Review Has Resulted in Dissent

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- The Court's proportionality review was called into question by the following dissent. In this case, the dissenting justice noted that every other 16-year old defendant who was tried for capital murder was sentenced to life in prison. Portions of the dissent follow:

We have stated that the test of proportionality is whether juries in this jurisdiction generally approve the Supreme penalty for comparable or similar crimes. Juries in Virginia generally have not approved the imposition of the death penalty for 16-year old capital murder offenders ... Since 1987, ten 16-year old defendants have been convicted of capital murder, and only one defendant Chauncey Jackson [the case under review] has been sentenced to death. I agree with the majority that Jackson's offenses are atrocious ... However, my review of all capital murder cases leads me to the conclusion that the sentence of death imposed upon Jackson is excessive and is disproportionate to penalties imposed in similar cases...The facts in the Novak case [which included the near decapitation of one of two young boys who were murdered] are more egregious than the facts in the present case...Owens [another 16 year old defendant] killed four persons, including a 14-year old boy...*Jackson v. Commonwealth*.

The Virginia Supreme Court Appears to Narrowly Define Proportionality Review

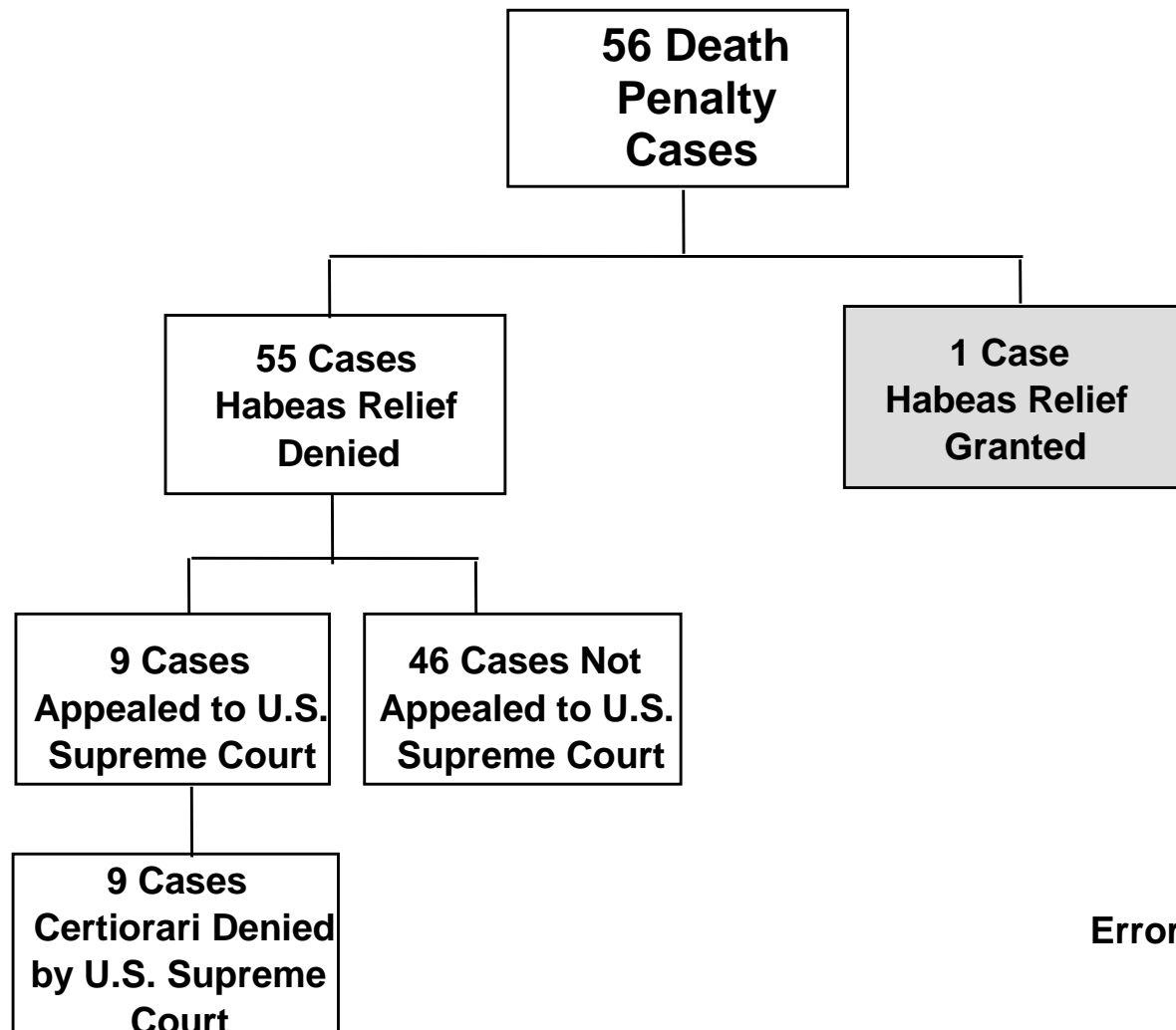
(continued)

61

- Since the death penalty was reinstated in 1977, the Virginia Supreme Court has conducted sentence review under these circumstances for 119 cases and concluded that none were excessive or disproportionate.
- These conclusions have been reached despite evidence presented in this study which indicates that juries return sentences of life without parole in 41 percent of all cases where the defendant has been found guilty of capital murder and they were asked to consider the punishment of death.

Post-Conviction Review: The Virginia Supreme Court Typically Does Not Grant Habeas Relief Following Direct Review

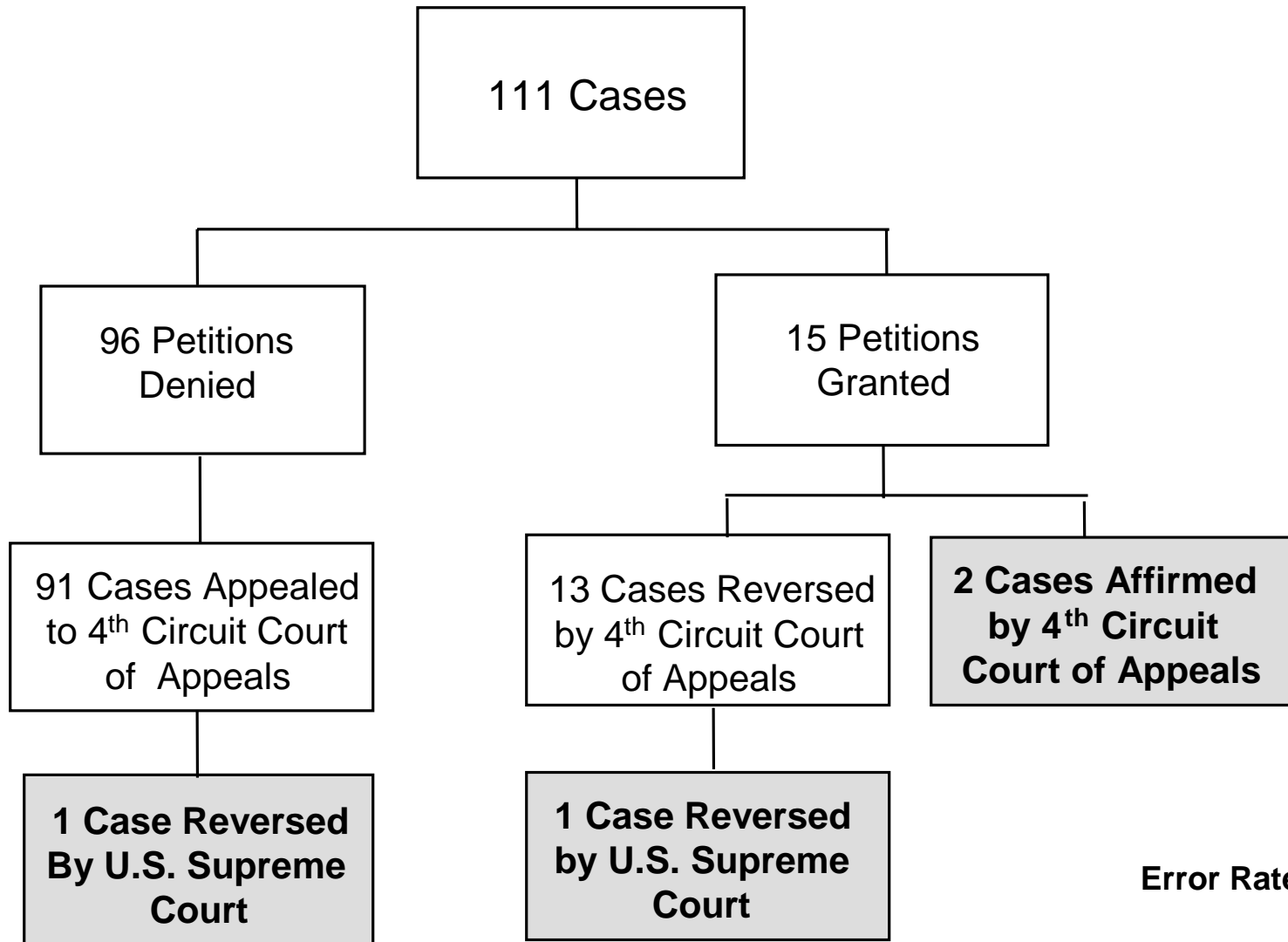
62



Error Rate = 2%

Post-Conviction Review: Once Appealed to Federal Court, Most Habeas Petitions Are Denied

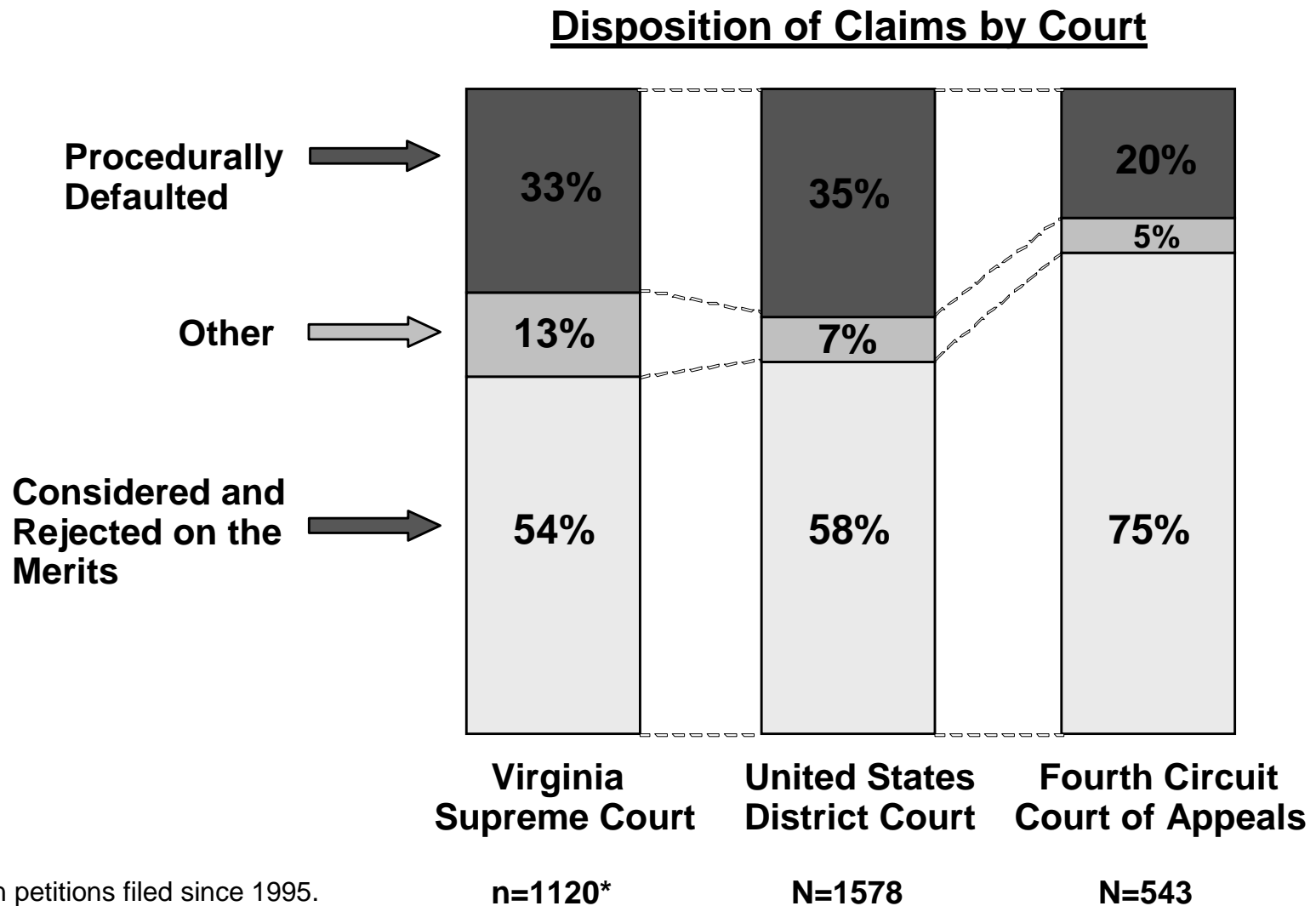
63



Error Rate = 4%

A Substantial Number of Claims of Trial Error Are Procedurally Defaulted in the Post-Conviction Phase of Judicial Review

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Exceptions to Procedural Default Are Granted at Direct Review

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- The courts will excuse the procedural default of claims to prevent the execution of an innocent person.
- At direct review, the Virginia Supreme Court may excuse a procedural default for “good cause shown” and to “attain the ends of justice”
 - To meet the good cause requirement, the defendant must prove that the claim could not have been known and raised at trial.
 - To satisfy the ends of justice requirement the defendant must convince the court that, but for the error in the defaulted claim, he would not have received a death sentence.

Exceptions to Procedural Default Are Granted at Post-Conviction

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- **The United States District Court will excuse a procedural default under certain conditions. The court requires defendants to show “cause and prejudice” or a “miscarriage of justice” to overcome a procedural default.**
 - **To meet the standard of cause and prejudice the defendant must show that the trial error could not have been raised earlier and that the violation worked to his substantial disadvantage**
 - **The meet the miscarriage of justice standard the defendant must show that but for the error, “no reasonable juror would have found the petitioner guilty of the death penalty”**

A Few Inmates on Death Row Have Received Constitutionally Flawed Trials

67

- **According to several written opinions of federal judges, the Virginia's procedural restrictions have forced the courts to affirm the convictions for a few persons who were unquestionably guilty of capital murder, but have, nevertheless, not received a fair trial. An example of one such opinion is presented on the next slide.**
- **Whether this is acceptable public policy is a question for the General Assembly.**

Opinion of Federal Judge Raises Concerns About the Trial of Death Row Inmate

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- On January 23, 1995, a United States District Court Judge wrote the following after reviewing the federal habeas corpus petition of Dana Ray Edmonds:
 - In closing, the court would like to make it clear that it believes Dana Ray Edmonds did not receive effective assistance of counsel. The court believed this to be the case when it granted habeas relief in August of 1992, and it is even more apparent to the court today. There cannot be a more blatant conflict of interest than the one that existed in the present case.
 - Even more troubling to the court, Dana Ray Edmonds will suffer the Commonwealth's most severe penalty in less than thirty-six hours, despite the fact that the trial in which his death sentence was imposed was, unquestionably, marred by a clear violation of his 6th Amendment right to counsel.
 - Nevertheless, bounded by case precedent and the enigmatic doctrine of procedural default, the court must deny the Petitioner's motion for stay of execution and writ of habeas corpus. Edmonds' claim that his 6th Amendment rights were violated is procedurally barred from a collateral review on the merits.

Presentation Outline

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- ☐ Study Overview and Summary of Findings
- ☐ Background on Capital Punishment
- ☐ Prosecution of Capital-Eligible Cases
- ☐ Judicial Review of Capital Cases
- ☒ Executive Clemency
- ☐ Conclusion

Executive Clemency Established as Additional Safeguard Against the Execution of the Innocent

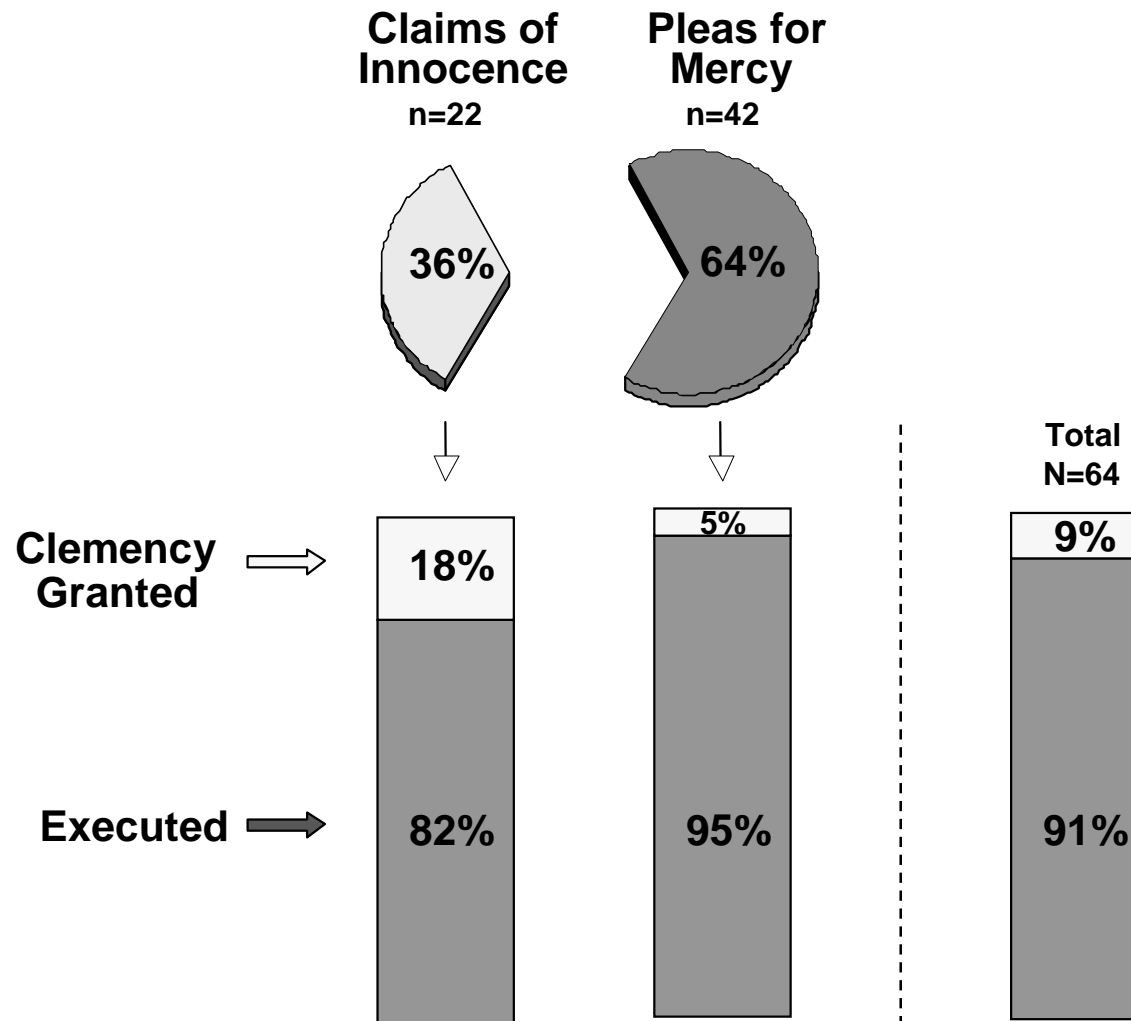
70

- **Through the Virginia Constitution, Governors have been vested with the power to commute capital punishment sentences and to grant pardons or reprieves.**

- **Governors may use executive clemency to:**
 - **prevent the execution of a prisoner whose guilt remains in doubt following the judicial review process or,**
 - **prevent executions in cases where a death sentence may be deemed inappropriate due to other factors such as the age or mental condition of the prisoner**

Clemency Has Been Granted to Nine Percent of Prisoners Who Have Been Sentenced to Death

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Clemency Process Occurs Beyond Public View

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- **Evaluating the reliability of the clemency process is difficult because its inner-workings and deliberations are shielded from public view.**
- **Governors have complete discretion in deciding whether and how to investigate issues raised in clemency petitions and their work is considered confidential. Records are scarce.**
- **The Parole Board can play an investigative role in the process but this is not required by law.**
- **Without more structure, the reliability of this process will remain in question.**

Presentation Outline

73

- ☐ Study Overview and Summary of Findings
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Conclusions

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- The evidence from this study offers a mixed picture of Virginia's system of capital punishment. The findings clearly indicate that race plays no role in the decisions made by local prosecutors to seek the death penalty in capital-eligible cases.
- However, the findings are equally clear that whether a defendant charged with a capital-eligible crime actually faces the death penalty is more related to the type of jurisdiction in which the crime was committed than the actual circumstances of the capital murder.
- In terms of the judicial review process, the reversal rate for death sentences in Virginia is low. At the earliest stage of judicial review, the Virginia Supreme Court is not substantially limited by procedural rules in reviewing claims of trial error.

Conclusions

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- However, at later stages of the review, both the State and federal courts strictly adhere to procedural restrictions that substantially limit the number of claims of trial error that are reviewed on the merits. Because both the State and federal appellate courts strictly apply these standards, a substantial proportion of claims related to the fairness of capital murder trials are never considered in the post-conviction phase of judicial review.
- This study was not designed to address whether the inmates who are currently on death row are innocent of the crimes for which they were sentenced. Nor were JLARC staff in a position to evaluate the credibility of any claims of innocence raised by inmates who have been sentenced to death. Accordingly, it cannot be concluded from the findings presented in this study that the State is executing persons who are innocent of the crimes for which they were sentenced. Still, the magnitude of the evidence against capital murder defendants that was examined by JLARC in its review of prosecutorial discretion was considerable.

Conclusions

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- **Based on the study findings two significant policy questions are raised for consideration by the General Assembly:**
 - **Can the disparate outcomes which flow from the proper exercise of prosecutorial discretion be accepted in a system where the ultimate sanction is execution?**
 - **Does the fact that Virginia's procedural restrictions have forced the State and federal courts to affirm the convictions for a small number of death row inmates who may not have received a fair trial, warrant the attention of the General Assembly?**